IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 28TH MARCH 2007 / 7TH CHAITHRA 1929

Crl.Rev.Pet.No. 946 of 1998

CRA.113/1992 of SESSIONS COURT, KOTTAYAM
CC.249/1989 of JUDL.MAGISTRATE OF FIRST CLASS, KANJIRAPPALLY
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REVN. PETITIONER:

CHANDY, S/O. THOMAS
NELLIYANIVEEDU
KAPPAD BHAGAM, THAMPALAKADU KARA
KANJIRAPPALLY.

BY ADV. SRI.K.GOPALAKRISHNA KURUP

RESPONDENTS:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTORMR
HIGH COURT OF KERALA ERNAKULAM.

BY PUBLIC PROSECUTORMR. C.M. KAMMAPPU

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 28/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO. 5699 OF 1998 IN CRL.R.P.NO. 946 OF 1998

DISMISSED.

28-3-2007 **SD/-K.R.UDAYABHANU, JUDGE**

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.946 of 1998

DATED THIS THE 28th day of March 2007

ORDER

The revision petitioner stands convicted for the offences under Sections 408, 465 and 477(A)I.P.C. and sentenced to undergo rigorous imprisonment for six months each for the offences on the prosecution allegation that he being the paid Secretary of Kappadu Service Co-Operative Society and in charge of records, cash and assets of the society on 3-7-85, withdrew Rs.5,000/- from the account of the Bank and did not make the entry in the day book of the particular day and also that he withdrew a sum of Rs.7500/- and Rs.10,000/- from his S.B.account in the society when he was having only a cash balance of Rs.404.67.

2. The evidence adduced in the matter consisted of the testimony of Pws.1 to 9 and Exts.P1 to P18. The defence has examined DW1 and marked Exts.D1 to D4. The evidence adduced in the matter, I find, do establish the fact that the amount withdrawn from the account of the society, i.e.Rs.5,000/- on 3-7-85 was entered in the register only on 10-10-1985. The withdrawal of Rs.7,500/- and R.10,000/- from his S.B.account in which the cash balance was only Rs.400 and odd also stands established. It is the version of the

accused as well as DW1, auditor of the society that Rs.5,000/- was entered in the petty cash register but the above document has not been produced. PW2, the only remaining staff member of the society apart from the Secretary has admitted the existence of such a petty cash register. The version of the accused is that the amount was given to a customer towards a loan from fixed deposit. In the circumstances, it appears that the prosecution ought to have produced the petty cash register. Hence, the defalcation of Rs.5,000/- alleged cannot be said to have been proved beyond reasonable doubt. So far as the withdrawal of Rs.7500/- and Rs.10,000/- are concerned, the contention of the revision petitioner is that there was an overdrawal facility for the officers of the Bank is denied by Pws.1 and 2. By-laws of the society produced as Ext.P11 also did not contain any provision for the above overdrawal. In the circumstances, the withdrawal of Rs.7500/- and Rs.10,000/- from his S.B.account where there was no sufficient cash in his account is a clear instance of defalcation. Hence the findings that the accused guilty of the offences under Sections 408 and 477 (A) I.P.C. are only liable to be confirmed.

3. So far as the offence under section 465 I.P.C. is concerned, there is no allegation of forgery as such in the prosecution allegations. Hence, I find that the conviction for the offence under section 465 is

liable to be set aside.

Counsel for the revision petitioner has pointed out that the incident has taken place in 1985 and that the revision petitioner is right now aged 72 years. In the circumstances and considering the fact that he was facing the criminal proceedings so far, i.e., more than 20 years, the sentence imposed for the offence under Section 408 IPC is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one month. The offence with respect to Section 477(A) IPC is concerned, the sentence is modified to pay a fine of Rs.5,000/- and in default to undergo simple imprisonment for one month. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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K.R.UDAYABHANU, J

CRL.R.P.NO.946 of 1998

ORDER

28-3-2007